

AMENDED IN ASSEMBLY AUGUST 4, 2016
AMENDED IN ASSEMBLY JUNE 29, 2016
AMENDED IN ASSEMBLY JUNE 21, 2016
AMENDED IN ASSEMBLY MAY 31, 2016
AMENDED IN ASSEMBLY MARCH 7, 2016
AMENDED IN SENATE FEBRUARY 12, 2015

SENATE BILL

No. 37

Introduced by Senator Vidak
(Principal coauthor: Senator Fuller)
(Principal coauthors: Assembly Members Mathis and Salas)

December 1, 2014

An act to amend Section 10723 of the Water Code, and to create the Kings River East Groundwater Sustainability Agency, and prescribing its boundaries, organization, operation, management, financing, and other powers and duties, relating to water districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 37, as amended, Vidak. Kings River East Groundwater Sustainability Agency Act.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to

be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes any local agency or combination of local agencies overlying a groundwater basin to decide to become a groundwater sustainability agency for that basin. The act deems certain agencies created by statute to manage groundwater the exclusive local agencies within their respective statutory boundaries with powers to comply with the act and authorizes these agencies to opt out of being the exclusive groundwater management agency.

This bill would create the Kings River East Groundwater Sustainability Agency and would require the agency's initial boundaries to be established by the boards of supervisors of the Counties of Fresno and Tulare after a noticed public hearing. The bill would *authorize the boundaries of the agency to be adjusted, as specified*. The bill would require the agency to elect to be a groundwater sustainability agency under the Sustainable Groundwater Management Act for that portion of the Kings Subbasin that lies within the boundaries of the agency and would require the agency to develop and implement a groundwater sustainability plan to achieve sustainable groundwater management within the territory of the agency. The bill would generally specify the powers and purposes of the agency. The bill would prescribe the composition of the 7-member board of directors of the agency and would require members and alternates to be chosen by certain member agencies, as specified. By imposing duties on the agency and the member agencies, the bill would impose a state-mandated local program. The bill would deem the Kings River East Groundwater Sustainability Agency the exclusive local agency with powers to comply with the Sustainable Groundwater Management Act.

This bill would incorporate additional changes to Section 10723 of the Water Code proposed by both this bill and SB 564 to become operative only if both bills are enacted and become effective before January 1, 2017, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Kings River East Groundwater Sustainability Agency Act.

3
4 Kings River East Groundwater Sustainability Agency Act

5
6 Article 1. Findings and Declarations

7
8 101. The Legislature hereby finds and declares that the
9 preservation of the groundwater resources within the territory of
10 the agency ~~for agricultural, municipal, and industrial uses~~ is in the
11 public interest and that the creation of the agency pursuant to this
12 act is for the common ~~benefit of water users~~; *benefit*.

13 102. The Legislature further finds and declares that the
14 groundwater management activities of the agency benefit all
15 operators of groundwater extraction facilities within the territory
16 of the agency.

17 103. The Legislature further finds and declares that
18 circumstances in the territory of the agency to be formed hereby,
19 which may not exist in other locations, justify the formation of the
20 agency and the grant of powers contained in this act.

21
22 Article 2. Creation and Purposes

23
24 201. (a) A groundwater management agency is hereby created
25 in the Counties of Fresno and Tulare to be known as the Kings
26 River East Groundwater Sustainability Agency.

27 (b) The agency shall be governed by a board as specified in
28 Section 501 and shall have the boundaries specified in Section
29 301. The agency shall only exercise the powers granted by this act
30 and the Sustainable Groundwater Management Act (Part 2.74
31 (commencing with Section 10720) of Division 6 of the Water
32 Code) for purposes of groundwater management within the
33 boundaries of the agency, together with any other powers as are
34 reasonably implied, necessary, and proper to carry out the
35 objectives and purposes of the agency to implement the Sustainable
36 Groundwater Management Act. The agency shall abide by the
37 rules and regulations promulgated by the Department of Water

1 Resources and the State Water Resources Control Board to
2 implement the Sustainable Groundwater Management Act.

3
4 Article 3. Boundaries
5

6 301. For purposes of this act, the initial boundaries of the
7 agency shall include the following:

8 (a) All land located within the exterior perimeter boundaries of
9 Alta Irrigation District that is within the Counties of Fresno and
10 Tulare.

11 (b) All land located in the incorporated City of Reedley.

12 (c) All land located in Kings River Water District plus parcel
13 350-150-16 within the County of Fresno, as that parcel existed as
14 of January 1, 2016, and excluding the incorporated City of Sanger.

15 (d) Land that is east of Alta Irrigation District and east of the
16 east line of Sections 13 and 24, T13S, R23E, between Alta
17 Irrigation District and east line and the east line of the Bulletin
18 118 Kings Subbasin boundary, as described in the report by the
19 Department of Water Resources titled, “California’s Groundwater:
20 Bulletin 118,” updated in 2003, as it may be subsequently updated
21 or revised in accordance with Section 12924 of the Water Code.

22 302. The agency’s initial boundaries shall be established by
23 the boards of supervisors of the Counties of Fresno and Tulare
24 after a noticed public hearing. The boundaries shall be depicted
25 on a map that shall be adopted by the boards of supervisors of
26 those counties and thereafter recorded in the office of the county
27 recorder of each county.

28 303. (a) The boards of supervisors of the Counties of Fresno
29 and Tulare may adjust the boundaries of the agency in the same
30 manner prescribed for establishment of the initial boundaries if
31 the boundaries of the basin are revised, including the establishment
32 of new subbasins.

33 (b) *The boundaries of the agency shall not be adjusted to include*
34 *an area of the basin within the management area of another*
35 *groundwater sustainability agency unless the agency has entered*
36 *into a memorandum of agreement or other legal agreement with*
37 *that groundwater sustainability agency that permits the area to*
38 *be included.*

39 (c) *The boundaries of the agency shall not be adjusted to include*
40 *any part of a proposed management area, as defined in a notice*

1 *of intent submitted pursuant Section 10723.8 of the Water Code,*
2 *unless the agency has entered into a memorandum of agreement*
3 *or other legal agreement with all agencies listed in the notice of*
4 *intent that permits the area to be included.*

5
6 Article 4. Definitions
7

8 401. Unless otherwise indicated by their context, the definitions
9 set forth in this article govern the interpretation of this act.

10 401.1. “Actively and primarily engaged in production of
11 agriculture” means that a person derives at least 75 percent of his
12 or her annual income from production agriculture.

13 402. “Agency” means the Kings River East Groundwater
14 Sustainability Agency established by this act.

15 403. “Alta” means the Alta Irrigation District.

16 404. “Aquifer” means a geologic formation or structure that
17 transmits water in sufficient quantities to supply pumping wells
18 or springs.

19 405. “Basin” has the same meaning as defined in Section 10721
20 of the Water Code.

21 406. “Board” means the board of directors of the agency, as
22 more particularly described in Section 501.

23 407. “Cities” means the Cities of Dinuba, Orange Cove, and
24 Reedley.

25 408. “Coordination agreement” has the same meaning as
26 defined in Section 10721 of the Water Code.

27 409. “County” means either the County of Fresno or the County
28 of Tulare, as the context requires. “Counties” means the County
29 of Fresno and the County of Tulare.

30 410. “Extraction” means the act of obtaining groundwater by
31 pumping or other controlled means.

32 411. “Groundwater” has the same meaning as defined in
33 Section 10721 of the Water Code.

34 412. “Groundwater management activities” means programs,
35 measures, or actions taken to preserve, protect, and enhance
36 groundwater resources within the territory of the agency.

37 413. “Kings Subbasin” means the San Joaquin Valley
38 Groundwater Basin Kings Subbasin.

1 414. “Member agency” means Alta, the counties, the cities,
2 and the special districts entitled to representation on the agency’s
3 board of directors as specified in Section 501.

4 415. “Operator” has the same meaning as defined in Section
5 10721 of the Water Code.

6 416. “Person” ~~includes any state or local governmental agency,~~
7 ~~private corporation, firm, partnership, limited liability company,~~
8 ~~individual, group of individuals, or, to the extent authorized by~~
9 ~~law, any federal agency.~~ *has the same meaning as defined in*
10 *Section 10735 of the Water Code.*

11 417. “Plan” means a groundwater sustainability plan prepared
12 by the agency pursuant to this act.

13 418. “Supplemental water” means surface water or groundwater
14 imported from outside the watershed or watersheds of the basin
15 or aquifer and floodwaters that are conserved and saved within the
16 watershed or watersheds that would otherwise have been lost or
17 would not have reached the basin or aquifer.

18 19 Article 5. General Provisions 20

21 501. (a) The agency shall be governed by a board of directors
22 that shall consist of seven members, as follows:

- 23 (1) One member shall be chosen by Alta.
- 24 (2) One member shall be chosen by the County of Fresno.
- 25 (3) One member shall be chosen by the County of Tulare.
- 26 (4) One member shall be chosen by the cities. This member
27 shall be chosen from the members of the city councils of the cities
28 whose territory, at least in part, overlies the territory of the agency.
29 This member shall be chosen at a public meeting where each city
30 is represented by its mayor.
- 31 (5) One member shall be chosen from the members of the
32 governing boards of the following special districts that are not
33 governed by the board of supervisors of either county, are engaged
34 in water activities, and whose territory, at least in part, overlies
35 the territory of the agency:
 - 36 (A) Hills Valley Irrigation District.
 - 37 (B) Orange Cove Irrigation District.
 - 38 (C) Tri-Valley Water District.
 - 39 (D) Kings River Water District.

1 (6) One member shall be chosen from the members of the
2 governing boards of special districts that provide drinking water
3 within the territory of the agency.

4 (7) One member shall be chosen by the other six board members
5 to represent agricultural interests within the territory of the agency.
6 This member shall reside and be actively and primarily engaged
7 in production of agriculture within the territory of the agency. This
8 member shall be selected from a list of at least five nominations
9 submitted from the Fresno County Farm Bureau and the Tulare
10 County Farm Bureau, acting jointly, but the five nominees need
11 not be members of either organization.

12 (b) The board members described in paragraphs (1), (2), and
13 (3) of subdivision (a) shall be chosen by their respective governing
14 boards from their board members whose districts or divisions
15 overlie, at least in part, the territory of the agency.

16 (c) The board members described in paragraphs (5) and (6) of
17 subdivision (a) shall be chosen at a public meeting where each
18 special district is represented by the president or chair of its
19 governing board.

20 (d) There shall be an alternate for each board member, chosen
21 in the same manner and by the same entity as the board member.
22 The alternate member shall act in place of the board member he
23 or she is an alternate for in case of that board member's absence
24 or inability to act.

25 502. (a) The members described in paragraphs (1) to (6),
26 inclusive, of subdivision (a) of Section 501 shall serve for a
27 four-year term of office, or until the member is no longer an
28 eligible official of the member agency. These members may serve
29 for more than one term of office.

30 (b) The member described in paragraph (7) of subdivision (a)
31 of Section 501 shall serve a four-year term of office.

32 503. (a) The board may adopt an ordinance to provide
33 compensation to members of the board in an amount not to exceed
34 one hundred dollars (\$100) per day for each day's attendance at
35 meetings of the board or for each day's service rendered as a
36 member of the board by request of the board. For purposes of this
37 section, the determination of whether a board member's activities
38 on any specific day are compensable shall be made pursuant to
39 Article 2.3 (commencing with Section 53232) of Chapter 2 of Part
40 1 of Division 2 of Title 5 of the Government Code.

(b) Reimbursement for expenses of members of the board is subject to Sections 53232.2 and 53232.3 of the Government Code.

(c) The board may adopt an ordinance to increase the compensation received by members of the board above the amount of one hundred dollars (\$100) per day. The increase shall not exceed an amount equal to 5 percent, for each calendar year following the operative date of the last adjustment, of the compensation that is received when the ordinance is adopted.

(d) A board member shall not be compensated for more than a total of 10 days in any calendar month.

504. (a) The board may adopt ordinances for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the agency.

(b) An ordinance adopted by the board shall become effective 30 days from the date of its passage.

(c) All ordinances shall be adopted at noticed, public hearings by a majority vote of the board. No ordinance shall be adopted by the board except at a public hearing. Notice of the hearing shall be published in a newspaper of general circulation pursuant to Section 6066 of the Government Code.

(d) The board shall provide notice of the adoption of all ordinances.

505. No provision of this act shall be construed as denying to the counties, any city, Alta, or any other member agency any rights or powers that they already have or that they may be granted.

506. The agency may contract with either county or Alta for staff and other services. The agency may hire contractors and consultants as it considers appropriate.

507. The agency shall enter into a coordination agreement with other local agencies for purposes of coordinating the agency's plan with other agencies or groundwater sustainability plans within the Kings Subbasin as required by the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code).

508. The agency may exclude from any of the requirements of this act, or the operation of any ordinance, any operator who annually extracts less than a minimum amount of groundwater as specified by an ordinance adopted by the board.

Article 6. Studies and Investigations

601. The agency may collect data and conduct technical and other investigations of all kinds in order to carry out the provisions of this act. All hydrological investigations and studies carried out by or on behalf of the agency shall be constructed by or under the supervision of licensed engineers or other persons qualified in groundwater geology or hydrology.

602. The agency may recommend and encourage water recycling and other water development projects, where those projects will enhance and contribute to the responsible management of groundwater resources, as part of its annual plan for implementation of groundwater management objectives.

Article 7. Sustainable Groundwater Management Powers

701. The agency shall develop and implement a groundwater sustainability plan pursuant to Chapter 6 (commencing with Section 10727) of Part 2.74 of Division 6 of the Water Code to achieve sustainable groundwater management within the territory of the agency.

702. The agency shall elect to be a groundwater sustainability agency pursuant to Chapter 4 (commencing with Section 10723) of Part 2.74 of Division 6 of the Water Code for that portion of the Kings Subbasin that lies within the boundaries of the agency.

703. The agency may exercise any of the powers described in Chapter 5 (commencing with Section 10725) of Part 2.74 of Division 6 of the Water Code and the enforcement powers described in Chapter 9 (commencing with Section 10732) of Part 2.74 of Division 6 of the Water Code.

704. The availability of supplemental water to any operator shall not subject that operator to regulations *by the agency* that are more restrictive than those imposed on other operators.

Article 8. Fee Authority

801. Pursuant to Chapter 8 (commencing with Section 10730) of Part 2.74 of Division 6 of the Water Code, the agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs

1 of a groundwater sustainability program, that include, but are not
2 limited to, the preparation, adoption, and amendment of a
3 groundwater sustainability plan, investigations, inspections,
4 compliance assistance, enforcement, and program administration,
5 including a prudent reserve.

6
7 *Article 9. Miscellaneous*
8

9 *901. In the event of any conflict between the Kings River East*
10 *Groundwater Sustainability Agency Act and the provisions of the*
11 *Sustainable Groundwater Management Act (Part 2.74*
12 *(commencing with Section 10720) of Division 6 of the Water Code),*
13 *the provisions of the Sustainable Groundwater Management Act*
14 *shall prevail.*

15 SEC. 2. Section 10723 of the Water Code is amended to read:

16 10723. (a) Except as provided in subdivision (c), any local
17 agency or combination of local agencies overlying a groundwater
18 basin may decide to become a groundwater sustainability agency
19 for that basin.

20 (b) Before deciding to become a groundwater sustainability
21 agency, and after publication of notice pursuant to Section 6066
22 of the Government Code, the local agency or agencies shall hold
23 a public hearing in the county or counties overlying the basin.

24 (c) (1) Except as provided in paragraph (2), the following
25 agencies created by statute to manage groundwater shall be deemed
26 the exclusive local agencies within their respective statutory
27 boundaries with powers to comply with this part:

28 (A) Alameda County Flood Control and Water Conservation
29 District, Zone 7.

30 (B) Alameda County Water District.

31 (C) Desert Water Agency.

32 (D) Fox Canyon Groundwater Management Agency.

33 (E) Honey Lake Valley Groundwater Management District.

34 (F) Kings River East Groundwater Sustainability Agency.

35 (G) Long Valley Groundwater Management District.

36 (H) Mendocino City Community Services District.

37 (I) Mono County Tri-Valley Groundwater Management District.

38 (J) Monterey Peninsula Water Management District.

39 (K) Ojai Groundwater Management Agency.

40 (L) Orange County Water District.

1 (M) Pajaro Valley Water Management Agency.

2 (N) Santa Clara Valley Water District.

3 (O) Sierra Valley Groundwater Management District.

4 (P) Willow Creek Groundwater Management Agency.

5 (2) An agency identified in this subdivision may opt out of being
6 the exclusive groundwater management agency within its statutory
7 boundaries by sending a notice to the department, which shall be
8 posted on the department's Internet Web site within 15 days of
9 receipt. If an agency identified in paragraph (1) opts out of being
10 the exclusive groundwater management agency, any other local
11 agency or combination of local agencies operating within the
12 statutory boundaries of the agency that has opted out may notify
13 the department pursuant to Section 10723.8 of its decision to be
14 the groundwater sustainability agency.

15 (3) A local agency listed in paragraph (1) may comply with this
16 part by meeting the requirements of Section 10733.6 or opting to
17 become a groundwater sustainability agency pursuant to this
18 section. A local agency with authority to implement a basin-specific
19 management plan pursuant to its principal act shall not exercise
20 any authorities granted in this part in a manner inconsistent with
21 any prohibitions or limitations in its principal act unless the
22 governing board of the local agency makes a finding that the
23 agency is unable to sustainably manage the basin without the
24 prohibited authority.

25 (d) The decision of a local agency or combination of agencies
26 to become a groundwater sustainability agency shall take effect
27 as provided in Section 10723.8.

28 SEC. 2.5. Section 10723 of the Water Code is amended to read:

29 10723. (a) Except as provided in subdivision (c), any local
30 agency or combination of local agencies overlying a groundwater
31 basin may decide to become a groundwater sustainability agency
32 for that basin.

33 (b) Before deciding to become a groundwater sustainability
34 agency, and after publication of notice pursuant to Section 6066
35 of the Government Code, the local agency or agencies shall hold
36 a public hearing in the county or counties overlying the basin.

37 (c) (1) Except as provided in paragraph (2), the following
38 agencies created by statute to manage groundwater shall be deemed
39 the exclusive local agencies within their respective statutory
40 boundaries with powers to comply with this part:

- 1 (A) Alameda County Flood Control and Water Conservation
2 District, Zone 7.
- 3 (B) Alameda County Water District.
- 4 (C) Desert Water Agency.
- 5 (D) Fox Canyon Groundwater Management Agency.
- 6 (E) Honey Lake Valley Groundwater Management District.
- 7 (F) Kings River East Groundwater Sustainability Agency.
- 8 (G) Long Valley Groundwater Management District.
- 9 (H) Mendocino City Community Services District.
- 10 (I) Mono County Tri-Valley Groundwater Management District.
- 11 (J) Monterey Peninsula Water Management District.
- 12 (K) *North Fork Kings Groundwater Sustainability Agency.*
- 13 ~~(K)~~
- 14 (L) Ojai Groundwater Management Agency.
- 15 ~~(L)~~
- 16 (M) Orange County Water District.
- 17 ~~(M)~~
- 18 (N) Pajaro Valley Water Management Agency.
- 19 ~~(N)~~
- 20 (O) Santa Clara Valley Water District.
- 21 ~~(O)~~
- 22 (P) Sierra Valley Groundwater Management District.
- 23 ~~(P)~~
- 24 (Q) West Kings Groundwater Sustainability Agency.
- 25 ~~(Q)~~
- 26 (R) Willow Creek Groundwater Management Agency.
- 27 (2) An agency identified in this subdivision may opt out of being
28 the exclusive groundwater management agency within its statutory
29 boundaries by sending a notice to the department, which shall be
30 posted on the department's Internet Web site within 15 days of
31 receipt. If an agency identified in paragraph (1) opts out of being
32 the exclusive groundwater management agency, any other local
33 agency or combination of local agencies operating within the
34 statutory boundaries of the agency that has opted out may notify
35 the department pursuant to Section 10723.8 of its decision to be
36 the groundwater sustainability agency.
- 37 (3) A local agency listed in paragraph (1) may comply with this
38 part by meeting the requirements of Section 10733.6 or opting to
39 become a groundwater sustainability agency pursuant to this
40 section. A local agency with authority to implement a basin-specific

1 management plan pursuant to its principal act shall not exercise
2 any authorities granted in this part in a manner inconsistent with
3 any prohibitions or limitations in its principal act unless the
4 governing board of the local agency makes a finding that the
5 agency is unable to sustainably manage the basin without the
6 prohibited authority.

7 (d) The decision of a local agency or combination of agencies
8 to become a groundwater sustainability agency shall take effect
9 as provided in Section 10723.8.

10 SEC. 3. Section 2.5 of this bill incorporates amendments to
11 Section 10723 of the Water Code proposed by both this bill and
12 Senate Bill 564. It shall only become operative if (1) both bills are
13 enacted and become effective on or before January 1, 2017, (2)
14 each bill amends Section 10723 of the Water Code, and (3) this
15 bill is enacted after Senate Bill 564, in which case Section 2 of
16 this bill shall not become operative.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 a local agency or school district has the authority to levy service
20 charges, fees, or assessments sufficient to pay for the program or
21 level of service mandated by this act, within the meaning of Section
22 17556 of the Government Code.